

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

JOINT PETITION OF CENTRAL)
ILLINOIS PUBLIC SERVICE COMPANY)
d/b/a AMERENCIPS AND THE CITY OF)
ROODHOUSE, ILLINOIS,)

FOR APPROVAL OF AN AGREEMENT)
BETWEEN THE PARTIES DEFINING)
SERVICE AREAS IN GREENE COUNTY,)
ILLINOIS PURSUANT TO SECTION)
5/11-117-6 OF THE ILLINOIS MUNICIPAL)
CODE.)

DOCKET NO. 02-0286

ILLINOIS
COMMERCE COMMISSION
AUG 16 2 07 PM '02
CHIEF CLERK'S OFFICE

PETITION FOR INTERLOCUTORY REVIEW
OF ADMINISTRATIVE LAW JUDGE'S RULING

ILLINOIS RURAL ELECTRIC COOPERATIVE (IREC), by its attorneys,
GROSBOLL, BECKER, TICE & REIF, Attorney Jerry Tice of counsel, and ROBERT V.
BONJEAN JR., pursuant to Section 200.520 of the Rules of Practice of the Illinois Commerce
Commission (Commission) submits this Petition for Interlocutory Review of the ruling of the
Administrative Law Judge (ALJ) entered July 29, 2002 and served on the parties on July 29,
2002 denying IREC's Petition for Leave to Intervene in the above matter and in support
thereof states as follows:

I. SUMMARY

The issue before the Commission is whether IREC has sufficient interest to intervene in
this matter filed by central Illinois Public Service Company, d/b/a AmerenCIPS (CIPS) and the
City of Roodhouse, Roodhouse, Illinois, (Roodhouse) for approval of an agreement between
the parties defining service areas in Green County, Illinois pursuant to Section 5/11-117-6 of

the Illinois Municipal Code (65 ILCS 5/11-117-6 (d)).

The issue requires the application of Section 200.200 of the Rules of Practice of the Commission (83 Ill Adm Code Section 200.200) providing the right to intervene and participate in proceedings before the Commission. The ALJ denied the petition of IREC to intervene with a one sentence ruling denying the same and providing no reason or justification for such ruling. IREC respectfully disagrees with the ALJ's order and requests the Commission reverse the ALJ's order, allow IREC to intervene in this proceeding and allow IREC to participate in the proceeding while the interlocutory appeal is pending.

II. PROCEDURAL BACKGROUND.

This case started when CIPS filed April 30, 2001, in Docket 01-0119, a Petition pursuant to 220 ILCS 5/8-508 to abandon and transfer territory, both within and outside the corporate limits of the City of Roodhouse to Roodhouse. The Petition included the names and addresses of eight customers residing outside of the corporate limits of Roodhouse to whom electric service would be abandoned by CIPS and the facilities, right to serve such customers, and certain additional territory lying outside the corporate limits of Roodhouse identified on Appendix A to the Petition (a copy of which is attached hereto as Exhibit 2) were contemplated by CIPS to be transferred under a sales agreement to Roodhouse. IREC filed its Petition to Intervene pursuant to 83 Ill Adm Code Section 200.200 in order to object to the transfer being made without IREC's consent. Thereafter, on September 18, 2001, and after IREC sought to intervene CIPS filed a voluntarily request to withdraw its Petition for abandonment and the Commission approved the request by an Order entered June 21, 2002.

On April 24, 2002, CIPS again sought to transfer the same property by filing a verified

Joint Petition with the City of Roodhouse pursuant to 65 ILCS 11-117-6 of the Illinois Municipal Code seeking approval by the Commission of a Service Area Agreement between CIPS and the City of Roodhouse. The agreement contemplates sale of the same territory, facilities, and customers made the subject of the abandonment Petition in Docket 01-0119 and seeks approval of the Service Area Agreement between CIPS and Roodhouse. The only difference between Docket 01-0119 and this Docket is the attempt by CIPS to characterize the sales agreement in Docket 01-0119 as a Municipal Service Area Agreement in this docket. IREC filed its Petition to Intervene in Docket No. 02-0286 on May 20, 2002 and CIPS filed its objections to IREC's Petition to Intervene on July 9, 2002. On July 22, 2002 IREC filed its response to the CIPS' objections to IREC's Petition to Intervene and on July 26, 2002 CIPS filed a reply to the IREC response. On July 29, 2002 the ALJ issued a one sentence ruling denying IREC's Petition to Intervene with no articulated reasons given by the ALJ and no hearing was held on the matter.

III. POSITION OF IREC.

IREC has petitioned to intervene in this docket for the same reasons that it petitioned to intervene in Docket No. 01-0119. That is: (1) IREC is an electric supplier as defined by Section 30/3.5 of the Electric Supplier Act (220 ILCS 30/3.5); (2) IREC has entered into a Service Area Agreement with CIPS that encompasses and delineates which of IREC and CIPS will be entitled to serve the territory surrounding Roodhouse part of which is encompassed in the Petition for Abandonment and Petition for Approval of a Service Area Agreement between CIPS and Roodhouse; (3) Roodhouse does not possess any authority to serve outside of its corporate limits without first obtaining the written consent of the appropriate electric supplier

of the service area in which service is proposed to be extended; (4) The agreement between CIPS and Roodhouse calling for the sale of electric facilities, territory and customers in the area outside the corporate limits of Roodhouse is the same agreement, with the same terms, affecting the same territory for which CIPS sought abandonment in Docket No. 01-0119; and (5) The agreement does not require Roodhouse to obtain the written consent of IREC before extending electric service to any new customers in the unincorporated area made the subject of the proposed Municipal Service Area Agreement between CIPS and IREC as required by the Illinois Municipal Code 65 ILCS 5/11-117-1. Finally the Service Area Agreement between IREC and CIPS dated June 26, 1969 and approved by the Illinois Commerce Commission in ESA 108 on September 3, 1969, a copy of which is attached hereto as Exhibit 1, is an agreement subject to the sole regulatory jurisdiction of the Commission under Section 6 of the Electric Supplier Act (220 ILCS 30/6); Krueger v Menard Electric Cooperative 169 Ill App 3d 861; 523 NE 2d 708; 119 Ill Dec 952, 954 (4th Dist. 1988). Further, the CIPS Roodhouse Agreement calls for the transfer of CIPS designated service territory under the IREC/CIPS Service Area Agreement without IREC's consent and by a proceeding to which IREC is not a party. The rights of both IREC and CIPS to certain service territories under that IREC/CIPS Agreement are subject to regulation by the Commission and are not subject to assignment to a third party not otherwise subject to regulation by the Commission (Roodhouse which is not an electric supplier) without consent to that assignment by the Commission and without IREC being a party to that proceeding.

IV. ARGUMENT.

A. IREC HAS THE REQUISITE INTEREST IN THIS PROCEEDING TO INTERVENE AND PARTICIPATE THEREIN.

IREC meets all the requirements under 83 Ill Adm Code Section 200.200 for intervening and participating in this proceeding.

1. IREC has set forth its name, address and telephone number; has stated the nature of its interest, to-wit: its right to serve customers in the unincorporated area surrounding the City of Roodhouse by virtue of its rights under the Electric Supplier Act 220 ILCS 30/1 et. seq., and more particularly 30/5, 30/6, and 30/8 of such Act.

2. CIPS by its own admission intends to cease providing any service in and abandon Territory B (Purchase Agreement dated January 11, 2001, p.1; Amendment to Purchase Agreement dated April 25, 2001, p.1).

3. The service sought to be abandoned or transferred by CIPS is subject to a Service Area Agreement between IREC and CIPS which agreement is subject to regulation by the Commission pursuant to Section 6 of the Electric Supplier Act.

4. The abandonment or other relinquishment of service rights by CIPS in the territory outside of the unincorporated boundaries of Roodhouse by the sale of facilities, customers and service rights leaves IREC as the only electric supplier, as defined by the Act 30/3.5, to serve in that territory.

5. The Illinois Municipal Code 65 ILCS 5/11-117-1 requires Roodhouse to obtain the written waiver/consent of the appropriate electric supplier before extending service to any new customer located outside the corporate limits of Roodhouse including the territory sought to be

abandoned by CIPS and identified by CIPS as Territory B.

6. Failure of IREC to require Roodhouse to comply with Section 11-117-1 of the Illinois Municipal Code as a part of its agreement with CIPS for the right to serve new customers outside the corporate limits of Roodhouse may be construed as a waiver of the rights of IREC to serve additional customers located in Territory B.

7. IREC has objected to the purported transfer of territory subject to the IREC/CIPS Agreement without the consent of IREC.

CIPS asserts that the right of IREC to serve other customers located outside the corporate limits of Roodhouse besides the eight named customers is speculative only. Yet, CIPS can point to no provisions in the Agreement that requires Roodhouse to seek such consent from IREC nor does the CIPS/Roodhouse Agreement make clear that the rights of Roodhouse are limited strictly to the existing eight named customers or if such service can be enlarged in scope or extended to new customers located in the vicinity of those eight existing customers. The Agreement is simply silent on this issue leaving it to IREC and Roodhouse to resolve that issue when new customers seek electric service in the general area of the eight existing customers or in Territory B. Accordingly, CIPS's contention that IREC has nothing to worry about and that in fact Roodhouse will seek the written permission of IREC before it extends facilities beyond the eight named customers is itself speculative.

Further, the proposed Service Area Agreement between CIPS and Roodhouse identifies the territory in which the eight existing customers are located by congressional survey boundaries as shown by Exhibit 3 and Exhibit 4 attached hereto (representing Exhibit A and Exhibit C of the CIPS/Roodhouse verified petition) thereby authorizing Roodhouse to serve not

just the eight named customers located outside its corporate limits but also additional customers who may locate within the geographic boundaries of the Territory B (Appendix A map) identified in the Agreement, Joint Petition and maps attached thereto. Thus there is a serious question raised whether CIPS and Roodhouse intend for Roodhouse to have authority to serve any other customers who may locate within the geographical boundaries of Territory B (Appendix A map) without Roodhouse obtaining the prior written consent of IREC.

IREC is required to seek its relief with respect to this issue in this proceeding at this time. To do so at a later time may be too late. As noted by the court in Illinois Valley Electric Co-operative, Inc., v City of Princeton 229 Ill App 3d 631; 594 NE 2d 347; 171 Ill Dec 495, 500 (3rd Dist 1992) an electric supplier may well be deemed to have waived the issue of a municipality's non-compliance with the signed consent requirement of Section 11-117-1 if the electric supplier has a policy of allowing the municipality to serve locations outside the municipality's corporate boundaries. IREC simply cannot allow the proposed Municipal Service Area Agreement between CIPS and Roodhouse, which is silent on the right of Roodhouse to provide additional service in Territory B, beyond the eight customers named, to be the established policy for electric service in Territory B. To do so may be considered a waiver by IREC of the statutory obligations of Roodhouse established by Section 11-117-1. The interest of IREC in preventing such a determination is obvious.

Coles-Moultrie Electric Cooperative v City of Sullivan 304 Ill App 3d 153; 709 NE 2d 249; 237 Ill Dec 263 (4th Dist. 1999) (Sullivan) supports IREC's position. The Sullivan case held that the service area agreement between a municipality and Coles-Moultrie, an electric supplier, identifying service areas by maps and boundaries constituted a written waiver by the

electric supplier to any new service by Sullivan outside its corporate boundaries and in the area designated by the agreement and maps to be served by Sullivan so that Sullivan need not obtain written consent of Coles-Moultrie prior to serving new customers locating in that service territory. In the instant case, additional customers may locate in Territory B and seek electric service. Thus, Sullivan dictates IREC's need to be a party to this proceeding to determine whether the Agreement between Roodhouse and CIPS authorizes Roodhouse to serve those additional customers without obtaining the written consent of IREC as required by Section 11-117-1.

**B. THE PROPOSED AGREEMENT BETWEEN CIPS AND ROODHOUSE
DOES NOT SPECIFY THE AREAS IN TERRITORY B TO WHICH
ROODHOUSE MAY OR MAY NOT EXTEND SERVICE WITHOUT
OBTAINING THE PRIOR CONSENT OF IREC.**

CIPS maintains that its contract with Roodhouse incorporates by implication the provisions of Section 11-117-1. However, this is not true if the contract gives a different meaning or plainly shows a different intention McMahon v Chicago Mercantile Exchange, 221 Ill App 3d 935; 582 NE2d 1313; 164 Ill Dec 369, 375 (1st Dist. 4th Div 1991). Nothing in the Agreement reveals the intentions of CIPS and Roodhouse regarding service by Roodhouse without IREC's consent in the following situations:

1. Is service allowed to new customers who may be deemed to be within the single location of any of the eight customers?
2. Is Territory B considered to be one location for purposes of Section 11-117-1 and if so, is Roodhouse entitled to serve any additional customer locating within Territory B without

IREC's consent? See Illinois Valley Electric Co-Operative, Inc., v City of Princeton 229 Ill App 3d 631; 594 NE2d 347; 171 Ill Dec 495; 499 (3rd Dist 1992).

Even if the position of CIPS is correct that Section 11-117-1 is incorporated in the body of the CIPS/Roodhouse Agreement by implication, the Sullivan court would find IREC's failure to be a party to the proceeding and object to Roodhouse's service rights in Territory B to constitute a waiver by IREC of Roodhouse's duty under Section 11-17-1. Failure to allow IRC to be a party and to answer these questions jeopardizes the rights of IREC under the Electric Supplier Act as the only remaining electric supplier authorized to serve outside of the Roodhouse corporate boundary.

C. DENIAL OF IREC'S REQUEST TO INTERVENE BY THE ALJ VIOLATES
THE COMMISSION'S STANDARDS FOR EXERCISE OF DISCRETION.

The rules governing the exercise of discretion in all matters by the Commission are set forth in 83 Ill Adm Code Section 200.25. They provide as follows:

- "a) Integrity of the fact-finding process -- The principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision.
- b) Fairness -- Persons appearing in and affected by Commission proceedings must be treated fairly. To this end, parties which do not act diligently and in good faith shall be treated in such a manner as to negate any disadvantage or prejudice experienced by other parties.
- c) Expedition -- Proceedings must be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.
- d) Convenience -- The hearing process should be tailored where practicable to accommodate the parties, staff witnesses, the Hearing Examiner and the Commission itself.
- e) Cost-effectiveness -- Minimization of costs incurred by the Commission, and by both public and private parties, should be sought."

IREC's presence will allow the Commission to assemble a complete factual record regarding the unanswered questions raised by the proposed Roodhouse/CIPS Service Area Agreement; will allow all parties to present their respective interests allowing the Commission to achieve the goals of fairness to all parties and expeditiously handle these issues; has the potential for preventing future litigation over these issues; and will clarify in one single proceeding the exact territory and customers that Roodhouse is entitled to serve outside its corporate limits in Territory B thereby meeting the Commission's goals of convenience to the parties which in turn will be cost effective.

The Commission has jurisdiction of IREC and Roodhouse under Section 11-117-1.1, jurisdiction of CIPS and Roodhouse under Section 11-117-6(d) of the Illinois Municipal Code regarding municipal and electric supplier service area agreements and jurisdiction of the IREC/CIPS Service Area Agreement pursuant to Section 6 of the Electric Supplier Act. This jurisdiction is exclusive to the Commission. Kruger v Menard Electric Cooperative 169 Ill App 3d 861; 523 NE2d 708; 119 Ill Dec 952, 954 (4th Dist 1988). Thus, if the Commission fails to allow IREC to intervene and fails to answer these questions while it has jurisdiction of Roodhouse, CIPS and IREC together with the respective agreements, then the Commission will set the stage for future litigation which does not serve the public interest nor provide definiteness and stability regarding electric service for customers locating in Territory B.

D. SECTION 11-117-1 DOES NOT AUTHORIZE ROODHOUSE TO PROVIDE
ELECTRIC SERVICE OUTSIDE ITS CORPORATE LIMITS WITHOUT
CONSENT OF IREC.

CIPS maintains Section 11-117-1 allows Roodhouse to extend service to new customers

outside its corporate limits but located in the proposed Territory B without IREC's consent. Therefore, based on CIPS' logic, CIPS and Roodhouse intend for Roodhouse to serve not only the eight customers identified, but all customers who may locate in Territory B in the future. This does not conform with the requirements of Section 11-117-1. Certainly, IREC does not intend its consent that Roodhouse may serve the eight customers to include additional customers in Territory B. Simply stated, CIPS' interpretation of the agreement and section 11-117-1 supports the position that IREC has an interest in this proceeding and should be allowed to intervene.

E. BY THE ABANDONMENT AND/OR SALE OF THE CIPS SERVICE
TERRITORY RIGHTS, ELECTRIC FACILITIES AND EIGHT NAMED
CUSTOMERS IN TERRITORY B TO ROODHOUSE, CIPS HAS
ABANDONED ITS RIGHTS TO SERVE IN THAT AREA.

The Agreement with Roodhouse does not provide for CIPS to retain any service rights in Territory B. Consequently, upon culmination of the transaction, CIPS will have abandoned its service rights in Territory B. Thereafter, IREC will remain the only authorized electric supplier under Sections 5, 6, and 8 of the Electric Supplier Act to serve in Territory B and Roodhouse cannot infringe on IREC's service rights without IREC's consent (65 ILCS 11-117-1).

CIPS contends that it has the right to sell its service area designated under the Service Area Agreement between IREC and CIPS to Roodhouse and to bestow upon Roodhouse rights far beyond those authorized to Roodhouse under the Section 11-117-1 Illinois Municipal Code. This is an untenable position, because it impairs the rights of IREC under the Electric Supplier

Act, the IREC/CIPS Service Area Agreement and under the Illinois Municipal Code Section 11-117-1. Thus it cannot be allowed to occur without the written consent of IREC. IREC retains its right to provide electric service in all of Territory B as provided by the Electric Supplier Act, other than the eight named customers, unless it provides written consent to Roodhouse under the Illinois Municipal Code Section 11-117-1. Such is the interest of IREC in this proceeding which must be protected by the Commission.

F. CIPS CANNOT ASSIGN OR OTHERWISE TRANSFER ITS SERVICE
TERRITORY RIGHTS UNDER THE SERVICE AREA AGREEMENT WITH
IREC WITHOUT APPROVAL BY THE COMMISSION.

If CIPS is not abandoning its service territory delineated by the Service Area Agreement between IREC and CIPS and approved by this Commission, but instead is simply transferring its service territory to Roodhouse, such cannot be accomplished without approval of the Commission. Such approval must take place by a separate docket proceeding which includes as a party IREC because IREC is a party to the Service Area Agreement creating these territorial service rights sought to be assigned by CIPS to a party other than IREC. Denial of the right of IREC to intervene in this proceeding in which such purported assignment of service territory rights under the Service Area Agreement between IREC and CIPS is sought by CIPS blatantly interferes with the rights of IREC under that Service Area Agreement and constitutes an abrogation by the Commission of its jurisdictional duties to supervise and regulate such service area agreements and the rights created thereby (220 ILCS 30/6).

The public policy of the State of Illinois is established by its statutes, court decisions and rules and regulations. The legislature has clearly established the public policy as

expressed in Section 11-117-1 of the Illinois Municipal Code (65 ILCS 11-117-1) that a municipality such as Roodhouse cannot extend its municipal electric service beyond its corporate limits without first obtaining the written consent of the affected electric supplier. To allow CIPS to assign its service rights under the contract establishing service territories between IREC and CIPS to a municipality such as Roodhouse which is not an electric supplier as defined by the Electric Supplier Act without requiring Roodhouse to obtain the written consent of IREC to such assignment of service rights violates the public policy of this State governing the rights of municipalities providing electric service such as Roodhouse. Such denial further violates the rights of IREC under the Service Area Agreement with CIPS, which contemplates that only CIPS, as an electric supplier under the jurisdiction of the Commission, will provide the electric service in the area designated to be served by CIPS under that Service Area Agreement. To deny IREC the right to intervene and participate in this proceeding to bring forth those issues to the Commission denies obvious rights of IREC in this proceeding and jeopardizes the future rights of IREC to provide electric service in the area in question Illinois Valley Electric Co-Op, Inc., v City of Princeton 229 Ill App 3d 631; 594 NE 2d 347; 171 Ill Dec 495, 499 (3rd Dist. 1992).

V. SUMMARY.

The Territory B sought to be abandoned and/or transferred by CIPS to Roodhouse, which is not an electric supplier is subject to regulation and control by the Commission under Section 6 of the Electric Supplier Act. IREC has an obvious interest in the arrangements between Roodhouse and CIPS for service in Territory B and the interest of IREC cannot be adequately protected by either Roodhouse or CIPS without the presence of IREC. Failure to

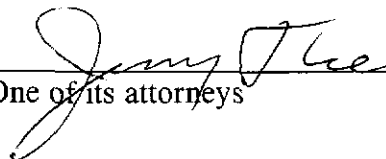
allow IREC to intervene and failure to resolve the unanswered issues presented by the proposed Agreement between Roodhouse and CIPS will jeopardize IREC's right to serve the territory outside the corporate limits of Roodhouse and leave IREC with no adequate remedy to safeguard its service rights in Territory B.

WHEREFORE, ILLINOIS RURAL ELECTRIC COOPERATIVE, respectfully requests the Commission for the following relief:

- A. To reverse the ALJ's Order and allow IREC to intervene in this action as an active participant.
- B. To allow IREC to participate in these proceedings pending an ultimate ruling by the Commission as to this Petition for Interlocutory Review or in the alternative to suspend the hearings in this matter until Interlocutory Review has been determined.
- C. To allow oral argument as to the issues presented by this Interlocutory Review.
- D. For such other and further relief as the Commission deems just and equitable.

ILLINOIS RURAL ELECTRIC COOPERATIVE


By: GROSBOLL, BECKER, TICE & REIF
and ROBERT V. BONJEAN

By: _____
One of its attorneys

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STATE OF ILLINOIS)
 : SS
COUNTY OF SCOTT)

BRUCE GIFFIN, being first duly sworn upon his oath deposes and states that he is the General Manager of ILLINOIS RURAL ELECTRIC CO., and that he has read the above and foregoing Petition for Interlocutory Review of Administrative Law Judge's Ruling by him subscribed and the same are true to the best of his knowledge, information and belief.

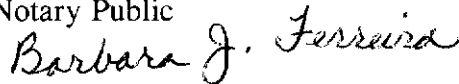

Bruce Giffin

Subscribed and sworn to before me this

13th day of August, 2002.



Notary Public



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PROOF OF SERVICE

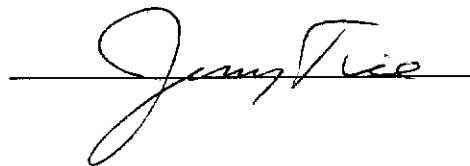
I, JERRY TICE, hereby certify that on the 16th day of August, 2002, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the document attached hereto and incorporated herein, addressed to the following persons at the addresses set opposite their names:

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A handwritten signature in cursive script, reading "Jerry Tice", is written over a horizontal line.